
UTAH LABOR COMMISSION

CLAY HARDY,

Petitioner,

vs.

**KEN HARDY'S BACKHOE SERVICE and
WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 03-0844

Ken Hardy's Backhoe Service and its insurance carrier, Workers Compensation Fund (referred to jointly as "Backhoe Service" hereafter), ask the Utah Labor Commission to review Administrative Law Judge Marlowe's award of certain medical benefits to Clay Hardy under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

With the assistance of an attorney, Mr. Hardy filed an application for hearing with the Commission to compel Backhoe Services to pay workers' compensation benefits for a back injury allegedly caused by his work for Ken Hardy's Backhoe Services on October 26, 2002. Backhoe Service filed an answer denying liability. Mr. Hardy's attorney withdrew from the case and, thereafter, Mr. Hardy represented himself.

Backhoe Service and Mr. Hardy submitted a "Stipulation of Facts and Proposed Questions For Direct Medical Panel Referral" to Judge Marlowe. After some discussion with the parties, Judge Marlowe determined the stipulated facts and questions were insufficient. Judge Marlowe therefore scheduled and held an evidentiary hearing on Mr. Hardy's claim. Judge Marlowe subsequently referred the medical aspects of the claim to an impartial medical panel.

After receiving and considering the medical panel's report, together with the other evidence of record, Judge Marlowe concluded that Mr. Hardy had, in fact, suffered a work-related back injury. Judge Marlowe did not award any disability compensation to Mr. Hardy, on the grounds that his work injury had not resulted in time off work or caused any permanent disability. As to Mr. Hardy's claim for medical benefits, Judge Marlowe accepted the medical panel's opinion that some of Mr. Hardy's medical care and medications prior to January 11, 2005, had been necessary to treat his work injury. Judge Marlowe therefore ordered Backhoe Service to pay the expense of such medical care and medications, as well as the cost of additional medication after January 11, 2005, "which are necessary to wean [Mr. Hardy] off his medications"

In requesting Commission review of Judge Marlowe's decision, Backhoe Service challenges only that part of Judge Marlowe's decision which requires Backhoe Service to pay the expense of weaning Mr. Hardy off his medications. Specifically, Backhoe Service argues there was no basis in the evidentiary record to refer that issue to the medical panel. Backhoe Service also argues that, even if the "drug weaning" issue was properly before the medical panel, the panel's report does not connect Mr. Hardy's need to be weaned from medications to his work accident at Backhoe Services.

FINDINGS OF FACT

The Commission adopts the findings of fact set forth in Judge Marlowe's decision. The facts material to the issues raised in Backhoe Service's motion for review can be summarized as follows.

Prior to October 26, 2002, Mr. Hardy suffered from a degenerative spinal condition. On that date, while operating a backhoe for Backhoe Service, he exacerbated this preexisting back condition. Mr. Hardy's medical record indicates that as early as May 2001, he had received pain medication for various medical problems and had developed some dependency on those medications. Then, when he received pain medication for the flare-up of his back condition after October 26, 2002, he again developed dependency.

In light of the complexity of Mr. Hardy's medical history, Judge Marlowe appointed a panel of medical experts to evaluate Mr. Hardy's claim. The panelists personally examined Mr. Hardy and reviewed his medical records and diagnostic studies. The panel also considered the opinions of other physicians who had treated or examined Mr. Hardy. The panel then answered the questions posed by Judge Marlowe. Specifically, the panel concluded that Mr. Hardy's preexisting degenerative disc disease had been "significantly aggravated" by his work at Backhoe Service on October 26, 2002, resulting in "ongoing complaints of back pain and left leg pain." The panel further concluded that medical care, including medication, had been necessary to treat the work-related aggravation of Mr. Hardy's preexisting condition. Finally, the panel opined that "it would be appropriate for [Mr. Hardy] to wean off his present medication regime."

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act requires employers or their insurance carriers to pay various benefits to employees injured by accident arising out of and in the course of employment. One of the benefits provided to injured workers by the Act is the right to payment of reasonable expenses of medical care necessary to treat the work-related injury. See §34A-2-418 of the Act.

Backhoe Service concedes its liability for the cost of Mr. Hardy's work-related medical care. However, Backhoe Service argues that the medical panel's report does not support Judge Marlowe's determination that Backhoe Services is liable for the cost of Mr. Hardy's medication while he

“weans” himself from the need for such medication. Backhoe Service’s argument is supported on two grounds:

- No evidentiary basis existed to submit this issue to the medical panel, and the panel should not have commented on the issue.
- Even if the panel properly considered the issue, the panel’s report does not support Judge Marlowe’s conclusion that Mr. Hardy required continuing medication **because** of his work injury.

The Commission addresses each of Backhoe Service’s arguments below.

Panel consideration of the medication issue. Section 34A-2-601 of the Utah Workers’ Compensation Act authorizes the Commission’s ALJs to refer the medical aspects of a disputed workers’ compensation claim to a panel of medical experts. Mr. Hardy’s claim involves a complicated medical history and raised significant questions as to the origins of his back problems, the effect of his work at Backhoe Service, the necessity of past medical care and the need for future care. It was therefore appropriate for Judge Marlowe to appoint a medical panel to evaluate the medical aspects of Mr. Hardy’s claim.

Although Backhoe Service argues it was inappropriate for the panel to consider Mr. Hardy’s need for future medication, the Commission views that issue as an integral component of the larger question that was squarely before the panel--what medical care has been, and will be, necessary to treat Mr. Hardy’s work injury? The medical record in this matter includes many references to Mr. Hardy’s past experiences with pain medication, as well as his use of such medication to treat his work injury. Under these circumstances, Judge Marlowe required the panel’s expertise in sorting out the causes of Mr. Hardy’s past medication use and his need for future medication. The panel responded with a reasoned discussion of Mr. Hardy’s condition and its opinion that Mr. Hardy required some continuing medication on a short-term basis.

Work injury as the cause of need for medication. Backhoe Service also argues that the medical panel’s report does not conclude that Mr. Hardy’s work injury is the cause of his need to be weaned from medication. Rather, Backhoe Service contends that Mr. Hardy’s need for weaning from pain medication is entirely attributable to his preexisting spinal condition and bears no connection to his work injuries.

The Commission does not share this interpretation of the medical panel’s opinion, or of the medical record upon which the panel’s opinion is based. To the contrary, both the medical record and the medical panel’s opinion, when read in context, indicate that Mr. Hardy required medication to treat the pain caused by his work injury. This use of pain medication aggravated his dependency on such medication, making it medically advisable to gradually wean him the medication.

Summary. The Commission concludes that Judge Marlowe properly referred the question of Mr. Hardy’s future need for medication to the medical panel. The medical panel’s response to that

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question persuasively establishes that Mr. Hardy requires some future medication as a result of the injury he suffered at Backhoe Service. Pursuant to §34A-2-401 and §34A-2-418 of the Utah Workers' Compensation Act, Backhoe Service is liable for the reasonable expense of such medication.

ORDER

The Labor Commission affirms Judge Marlowe's decision in this matter. It is so ordered.

Dated this 21st day of February, 2007.

Sherrie Hayashi
Utah Labor Commissioner